No. 89-357

In The

Supreme Court of the United States

October Term 1989

MARLA ROSS,

Petitioner,

vs.

MIDWEST COMMUNICATIONS, INC. d/b/a WCCO TELEVISION, ANDY GREENSPAN and AL AUSTIN,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Court of Appeals for the Fifth Circuit correctly determined that under Texas common law WCCO-TV's inclusion of petitioner's first name, the appearance of her former residence, and certain details of her assault in its documentary intended to prove a wrongful conviction of rape were newsworthy and did not constitute an invasion of petitioner's privacy as a matter of law.

2. Whether the Court of Appeals for the Fifth Circuit's judgment was correct because no invasion of privacy by publication of private facts occurred as a matter of Texas common law when the summary judgment evidence showed that WCCO-TV had obtained petitioner's identity and address and certain details of her assault pursuant to a proper request for an offense report and the Harris County Sheriff's Department was under an injuction requiring disclosure of offense reports containing such informantion.

3. Whether, in light of this Court's decision in the *The Florida Star v. B.J.F*, ___ U.S. ___, 109 S.Ct. 2603, 105 L.Ed.2d 443 (1989), WCCO-TV's inclusion of petitioner's first name, the appearance of her former residence, and certain details of her assault in its documentary is constitutionally protected as a matter of law where such information was truthful information lawfully obtained from government sources.

PARTIES TO THE PROCEEDING BELOW

Plaintiff/Petitioner: Marla Ross

Defendants/Respondents: Midwest Communications, Inc. d/b/a WCCO Television, Andy Greenspan and Al Austin

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REFERENCE TO OPINIONS

The opinion of the United States District Court of the Southern District of Texas is not reported and is reproduced in the Appendix in the petition already filed with the Court by petitioner.

The opinion of the United States Court of Appeals for the Fifth Circuit, dated March 31, 1989, is reported at 870

F.2d 271 and is reproduced in the Appendix in the petition already filed with the Court by petitioner.

JURISDICTION

The Judgment for the Court of Appeals for the Fifth Circuit was entered on March 31, 1989 and Rehearing was denied on April 27, 1989.

Petitioner alleges that jurisdiction of this Court is based upon 28 U.S.C. Section 1254(1).

STATEMENT OF THE CASE

The opinions of the district court and the court of appeals correctly state most of the relevant facts, but in light of petitioner's statement of the facts, WCCO-TV feels compelled to give the court a statement of additional relevant facts.

WCCO-TV was approached by the family of Steven Fossum for assistance because Mr. Fossum had been convicted in Texas of two rapes that they felt he did not commit. The first conviction was for the rape of Susan Lewis, and that conviction was based on an eye witness identification of Mr. Fossum as the rapist some seven weeks after the rape. The second conviction was for the rape of Linda Wade. WCCO Television's investigative team – the I-Team – agreed to look into the situation. Reporters Al Austin and Andy Greenspan, along with a photographer, Peter Molenda, went to Houston to investigate.

The I-Team obtained a copy of the Supplemental Report by the Harris County Sheriff's Department on Susan Lewis's identification of Fossum. That report refers to "Detective Woolery's complainant" who viewed the lineup and said that "the man that raped her was not in the line-up." Al Austin met with Detective Art Woolery of the Harris County Sheriff's Department, and Mr. Woolery provided him with a copy of petitioner's offense report with the name, address, and phone number whited out. The offense report number, 83-025396, did appear, as did the offense – aggravated rape-aggravated robbery.

Following the Woolery interview, Al Austin sent Peter Molenda, the I-Team photographer, to ask for a copy of the offense report at the public information window of the Harris County Sheriff's Department. Mr. Molenda requested, by offense number, a copy of the offense report. He was provided with an unexpurgated copy of the report that contained petitioner's name, address and home phone number from that window. A copy of the offense report was attached as Exhibit 1 to Mr. Molenda's affidavit filed in support of WCCO-TV's motion for summary judgment. After petitioner's suit was filed, WCCO-TV asked a legal assistant from a Houston law firm, Elizabeth Barton, to go to the same window and request a copy of the offense report by offense number. She obtained another copy of the offense report that had petitioner's name and address on it. This was also part of the summary judgment evidence.

Although petitioner was willing to prosecute, to appear and to testify should her rapist be found, she was confident that her rapist was not in the lineup that included Steven Fossum. Before Andy Greenspan talked

to petitioner's husband, in early 1986, petitioner had not heard from Mr. Woolery in at least a year. She assumed the case was not under active investigation.

The I-Team prepared a documentary concerning the Fossum convictions, and the material relative to Marla Ross appeared in connection with the Susan Lewis conviction. Mr. Austin and Mr. Greenspan had discovered that a number of other rapes with elements very similar to that of Ms. Lewis had occurred and that those victims either had not identified Steven Fossum or gave description of the rapist that did not match Steven Fossum, or were raped in the similar manner while Fossum was in jail. The undisputed similarities between petitioner's assault and that of Susan Lewis were: that the man would come to the door and, when the door was answered, claimed that he was a construction worker or a worker for Genex Homes and that he was looking for his dog or lost his dog and requested to use the phone. In some instances he referred to the dog as "Maggie." He would then pull a knife on the woman and force her into the bedroom. He demanded a bath or a shower with the victim and required oral sex. When he had finished he would tie the victim up with pantyhose. He also engaged in some theft. The physical description of the man in each instance was similar. Detective Woolery had told the I-Team that in light of the similarities, he thought Mr. Fossum was petitioner's rapist despite her failure to identify Fossum. The documentary noted these similarities in its presentation in order to raise the question whether Steven Fossum had been properly convicted on eyewitness testimony without any corroborating evidence and despite his alibi.

The I-Team elected to use the first name of the rape victims and photographs of the houses where the rapes occurred (although the victims no longer lived there). The I-Team felt that this would not identify the victims to the general public, but would impress law enforcement authorities (who knew the victims' identities) that serious questions existed whether Mr. Fossum was the man who raped Susan Lewis.

The report was broadcast in Houston on May 31, 1986. As a result of the broadcast, Steven Fossum was pardoned by the governor for the Linda Wade offense. A new trial was sought in the Susan Lewis case but had not yet been granted by the time of the summary judgment. The documentary received the Dupont Columbia award, the most prestigious award in broadcast journalism.

REASONS FOR DENYING THE WRIT

I. The questions presented by the petition for writ of certiorari solely concern interpretations of the common law of Texas and are not certworthy.

The issues presented to this Court and those decided by the district court and the court of appeals in this diversity action solely concern matters of state law. As such, petitioner has not presented any question worthy of review on certiorari. None of the considerations listed in Rule 17, Supreme Court Rules, governing review on certiorari are present in this case.

The Court of Appeals did not decide a federal question in conflict with an applicable decision of this Court, and, in fact, did not decide any question of federal law.

The issue presented to and decided by the Court of Appeals was whether petitioner made out a cause of action under the Texas common law of privacy. The only defensive issue considered by the Court of Appeals was whether petitioner's connection to the rape details was a matter of public concern sufficient to justify its disclosure under Texas privacy laws. The Court of Appeals expressly declined to decide any federal constitutional issues. 870 F.2d 271, 275 (Appendix at 33).

Although petitioner alleges a question of constitutional dimensions is presented concerning the appropriate balance between the First Amendment and an individual's right to privacy, the Court of Appeals properly refused to decide the case on that basis. As the Court of Appeals correctly noted in its decision, if a case can be decided on either constitutional grounds or as a matter of general law, the Court will decide only the latter. *Ashwander Valley Authority*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring). Because the propriety of the disclosure could be and was decided entirely under Texas privacy law, the Court of Appeals correctly deferred adjudication of any potential constitutional claim. Consequently, the petition raises no question of federal constitutional law.

The final reason cited in the petition for granting the writ of certiorari is an alleged need to ensure rape victims that their identities will not be disclosed to the community. The protection of rape victims' identities is solely a matter of Texas statutory and common law. The Court of Appeals' decision does not conflict with Texas law. To the extent an argument could be made that the identities of Texas rape victims deserve greater protection, it involves

only state law matters and does not raise federal concerns.

The petition for writ of certiorari presents no federal issues or issues concerning the Court of Appeals' method of reaching its decision. Petitioner merely disagrees with the Court of Appeals' assessment of the law of Texas and wants this Court to interpret or change the law of Texas to accommodate her claim. The issues involved in this case are not certworthy and the petition for writ of certiorari should be denied.

II. The Court of Appeals correctly determined that under Texas law WCCO-TV's inclusion of petitioner's first name, the appearance of her former residence and certain details of her assault in connection with a documentary intended to prove a wrongful conviction of rape were newsworthy and did not constitute an invasion of her privacy as a matter of law.

A. The Court of Appeals correctly held that WCCO-TV's broadcast, and the discussion of petitioner's case within that broadcast, involved a matter of legitimate public concern and was newsworthy.

The Court of Appeals correctly held that under Texas law WCCO-TV did not invade petitioner's privacy by publicly disclosing private facts. In *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), the Texas Supreme Court held that an essential element of a cause of action for wrongful publication of private information is "that the information publicized not be of legitimate concern to the public." 540 S.W.2d at 684-85. The Court

went on to state that this requirement looked to "the context of each particular case, concerning the nature of the information and the public's legitimate interest in its disclosure." 540 S.W.2d at 685.

This definition follows that of the *Restatement (Second) of Torts* § 652D, which the Texas Supreme Court acknowledged in the *Industrial Foundation* case. 540 S.W.2d at 682 n.21. *See also Gill v. Snow,* 644 S.W.2d 222, 224 (Tex. App. – Fort Worth 1982, no writ) (looking to Section 652D for the elements of this tort). Under the *Restatement,* the discussion of petitioner's rape in the documentary plainly was a matter of legitimate public concern. The *Restatement* recognizes that the discussion of crime in general and its victims are matters of legitimate public concern. *See Restatement (Second) of Torts,* § 652D, comments F and G. The Court of Appeals properly found no departure from these principles.

The Court of Appeals' determination was also consistent with this Court's decision in *The Florida Star v. B.J.F.,* ___ U.S. ___, 109 S.Ct. 2603, 105 L.Ed.2d 443 (1989) in which this Court observed that such matters generally are of public significance:

> . . . the article generally, as opposed to the specific identity contained within it, involved a matter of paramount public import: the commission, and investigation, of a violent crime which had been reported to authorities.

109 S.Ct. at 2611.

The Court of Appeals properly found that WCCO-TV did not forfeit this protection by including petitioner's

assault in the discussion of Mr. Fossum's conviction for Susan Lewis's assault. Detective Woolery, the detective investigating petitioner's assault, felt that Mr. Fossum committed the crime because of the similarity of the circumstances. Petitioner's indication that Mr. Fossum was not her assailant was therefore some evidence that perhaps Mr. Fossum was not Susan Lewis's assailant.

The Court of Appeals recognized that the details of petitioner's assault were sufficiently similar to the details of the Lewis rape to reasonably suggest that Steven Fossum had been wrongly accused, convicted and incarcerated in Texas for sexual assault. Accordingly, the Court correctly recognized the legitimate public interest in the details of petitioner's assault as they relate to the unlawful confinement of Steven Fossum, itself an uncontested matter of public concern.

The Court of Appeals correctly concluded that the use of petitioner's first name and photograph of her home in connection with the certain details of the assault were also a matter of public concern. To prove Fossum had been unjustly convicted the documentary had to be as accurate and credible as possible; WCCO-TV could not afford to be less accurate than they were in the documentary. The documentary was not just intended for the public's interest, it was also intended to interest law enforcement authorities. By using only her first name WCCO-TV made it clear to the authorities, who knew the first name, that WCCO-TV knew what they were talking about, but at the same time masked petitioner's identity to the general public. It preserved the essential credibility lost through the use of anonymity and pseudonyms. Likewise, use of the places where the assault occurred gives immediacy and a personalized frame of reference that fosters perception and understanding.

If it strengthens the impact and credibility, an individual's personal connection is substantially relevant to a newsworthy topic. *Gilbert v. Medical Economics Co.*, 665 F.2d 305, 308-309 (10th Cir. 1981); *see also Howard v. Des Moines Register*, 283 N.W.2d 289 (Iowa 1979), *cert. denied*, 445 U.S. 904 (1980). The Court of Appeals properly determined that Texas law is consistent with these precedents.

Finally, the Court of Appeals correctly observed that it "must resist the temptation to edit journalists aggressively," 870 F.2d at 275 (Appendix at 32), for fear that "Exuberant judicial blue-pencilling after the fact would blunt the quills of even the most honorable of journalists." *Id.* It properly refused to second guess WCCO-TV's editorial judgment that petitioner's identity as a victim was newsworthy and correctly held that WCCO-TV established this newsworthiness as a matter of law.

The Court of Appeals correctly determined petitioner's first name, the use of her residence, and certain details of her assault were substantially relevant to the newsworthy details of her rape and did not constitute an invasion of her privacy as a matter of Texas common law.

B. The Court of Appeals correctly held that the district court was not required to submit to a jury the propriety of WCCO-TV's editorial decisions as they affected petitioner, as the documentary was newsworthy as a matter of law.

The Court of Appeals correctly held there was no basis for submitting the case to the jury: the documentary and the discussion of petitioner's assault within it were newsworthy as a matter of law. The Court of Appeals expressly stated that it did not determine the use of a

rape victim's name is always newsworthy as a matter of law. 870 F.2d at 275 (Appendix at 32). Rather, it recognized the details of petitioner's rape were so "uniquely crucial" to the WCCO-TV documentary as to establish their newsworthiness as a matter of law.

Petitioner cites *Capra v. Thoroughbred Racing Ass'n*, 787 F.2d 463 (9th Cir. 1986), *Virgil v. Time, Inc.*, 527 F.2d 1122 (9th Cir. 1975), *cert. denied*, 425 U.S. 998 (1976), and *Diaz v. Oakland Tribune, Inc.*, 139 Cal.App.3d 118, 133 Cal. Rptr. 762, 772 (1983) in support of her view that a jury should decide this issue. These cases are based on California precedents that have established a three-part newsworthiness test unique to that state, a test that has been rejected by other courts. *See, e.g., Romaine v. Kallinger*, 109 N.J. 282, 537 A.2d 284 (1988); *Howard v. Des Moines Register*, 283 N.W.2d 289 (Iowa 1979), *cert. denied*, 445 U.S. 904 (1980).

Most courts have treated "newsworthiness" as a matter of law. *See e.g., Neff v. Time Inc.*, 406 F.Supp. 858 (W.D. Pa. 1976); *DeGregorio v. CBS*, 123 Misc.2d 491, 472 N.Y.S.2d 922 (N.Y. Sup. 1984); *Fletcher v. Florida Publishing Co.*, 319 So.2d 100, 111 (Fla. App. 1975), *rev'd on other grounds but aff'd on this point*, 347 So.2d 914 (Fla. 1976), *cert. denied*, 431 U.S. 930 (1977); *McNutt v. New Mexico State Tribune Co.*, 88 N.M. 162, 169, 538 P.2d 804, 811 (1975); *Williams v. KCMO Broadcasting*, 472 S.W.2d 1, 6 (Mo. App. 1971); *Buzinski v. DoAll Co.*, 31 Ill.App.2d 191, 175 N.E.2d 577, 579-80 (1961); *Meetze v. Associated Press*, 230 S.C. 330, 95 S.E.2d 606 (1956).

This Court has treated the identification of a matter as being of legitimate public concern as a question of law

for the court, not a jury, to determine. *See, e.g., Connick v. Myers*, 461 U.S. 138, 147-48, n.7, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983) (In deciding whether a public employee's termination resulted from exercise of free speech, whether the speech "addresses a matter of public concern" is a question of law for the court); *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 105 S.Ct. 2939, 86 L.Ed.2d 593 (1985) (determination of whether speech involves public concern treated as question of law for the court). Determination of this issue is appropriately one for the court, as it ultimately involves constitutional issues.

Moreover, submitting to the jury the question of "newsworthiness" on the undefined basis of "community mores" where the jury weighs the "social value" of the speech against its emotional inpact on the subject introduces unacceptable uncertainty into news reports of sexual assaults and crimes in general. In *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 108 S.Ct. 876, 99 L.Ed.2d 41 (1988), this Court rejected the suggestion that a jury should evaluate whether political or social discourse met the standard of "outrageousness" because this approach "runs afoul of our longstanding refusal to allow damages to be awarded because the speech in question may have an adverse emotional impact on the audience." *Hustler Magazine, Inc. v. Falwell*, 108 S.Ct. at 882. *See also NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 910, 102 S.Ct. 3409, 73 L.Ed.2d 1215 (1982). Petitioner's proposal that a jury should determine whether particular details of admittedly newsworthy events were newsworthy likewise runs afoul of that longstanding principle. The Court of

Appeals correctly determined that submission to the jury was not required in this case.

C. The Court of Appeals' judgment was also correct because petitioner's name, address, and certain details of her assault were a matter of public record with the Harris County Sheriff's office.

Although the Court of Appeals did not rely on this ground, its judgment was also correct under Texas law because petitioner's name, address and certain details of her assault were matters of public record in offense reports available to the public from the Harris County Sheriff's office. The Harris County Sheriff's office is a governmental body whose records are available for public inspection pursuant to the Texas Open Records Act, Tex. Rev. Civ. Stat. Ann., article 6252-17a. Part of the records that the Harris County Sheriff's office maintains are offense reports and supplementary reports on crimes that have been committed. These offense reports, including reports in rape cases, are by judicial decision available to the public from the Harris County Sheriff's office. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. – Houston [14th Dist.] 1975), writ ref'd n.r.e., 536 S.W.2d 559 (Tex. 1976) ("Chronicle I"); *Heard v. Houston Post Co.*, 684 S.2d 210 (Tex.App. – Houston [1st Dist.] 1984, writ ref'd n.r.e.).

Although the Attorney General and the Houston Court of Appeals have indicated that disclosure of rape offense reports on rapes pursuant to the Texas Open Records Act should not identify the victim, *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d

316 (Tex. App. – Houston [1st Dist.] 1984, no writ) ("Chronicle II"); Open Records Decision No. 339 (1982), those decisions did not apply here because a specific case, involving the Harris County Sheriff's Department, outlined that office's responsibility for disclosing offense reports.

In *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex.App. – Houston [1st Dist.] 1984, writ ref'd n.r.e.) the *Houston Post* sued the Harris County Sheriff's Department for failing to comply promptly with its obligations under the Texas Open Records Act, Texas Revised Civil Statutes Annotated, article 6252-17a. The district court in Harris County entered an order that the sheriff's office had to provide the identification and description of a complainant:

> (1) in all cases not under active investigation; (b) in all cases where the complainant is also the victim of the offense committed; (c) in all cases where the identification and description of the complainant is otherwise evident from the other nine categories of information ordered to be produced above; and (d) in all other cases except in cases of active investigation in which the Harris County Sheriff's Department within twenty-four (24) hours of the request applies to a court of competent jurisdiction and asserts in a verified pleading its genuine belief that there is a reasonable likelihood that serious physical harm would occur to the complainant if the complainant's identity or description was revealed to other than law enforcement agencies.

WCCO-TV's summary judgment evidence included a certified copy of this permanent injunction. When the Harris County Sheriff's Department appealed this order, the

Houston Court of Appeals modified the order slightly to eliminate some of the restrictions on the release of a victim's name. The Houston Court of Appeals specifically kept intact the trial court's order that in those instances where the complainant was also the victim of the offense committed or the identity of the victim was otherwise obvious, the offense report should be disclosed. 684 S.W.2d at 214.

The Houston Court of Appeals recognized that "[o]ccasions may arise when the release of complainant's identity would be harmful. On those occasions, it would be proper for the Sheriff, within 24 hours of the request, to apply to a court of competent jurisdiction setting out the harm." 684 S.W.2d at 214. Unless such action is taken, under the court's order the sheriff *must* release the information.

In this case the victim, Mrs. Ross, was the complainant and the case was not under active investigation at the time the offense report was requested. Under the order, then, the first page of the offense report – which included her name, address, date and nature of the attack – was a public record and had to be disclosed by the Harris County Sheriff's Department. The summary judgment evidence showed that WCCO-TV's cameraman and, after the suit was filed, a legal assistant, were able to obtain a copy of the report at the Harris County Sheriff's public information window. As a public record, disclosure of the information could not be a public disclosure of private facts under Texas law. *See Gill v. Snow*, 644 S.W.2d 222 (Tex. App. – Fort Worth 1982, no writ) (publication of matters of public record not a public disclosure of private facts). Even though the Fifth Circuit did not rely on this

ground, it is another reason that the petition should not be granted.

III. The questions presented by the petition for writ of certiorari are forestalled by this Court's recent decision in *The Florida Star v. B.J.F.*

Petitioner's claims are obviated by this Court's decision in *The Florida Star v. B.J.F.*, ___ U.S. ___, 109 S.Ct. 2603, 105 L.Ed.2d 443 (1989). In that case, this Court held it a violation of the First Amendment to impose damages on a newspaper for inadvertently publishing the name of a rape victim that had been lawfully obtained because imposing liability did not serve a need to further a state interest of the highest order. Even if the Court of Appeals had relied on constitutional grounds to affirm the summary judgment, *B.J.F.* supports the Court of Appeals on constitutional grounds.

B.J.F. undercuts the premise of each of the questions petitioner presents to the Court. B.J.F. holds that it is not negligent to reveal the identity of a rape victim in the course of a report of that crime, an acknowledged matter of legitimate public interest. *B.J.F.* holds that, absent an interest of the highest order, a state cannot declare that a rape victim's identity is not newsworthy and punish those who publish it. *B.J.F.* holds that the publication of truthful information lawfully obtained from government sources – even where that information is a rape victim's identity and address – is constitutionally protected as a matter of law absent a state interest of the highest order.

This Court characterized *B.J.F.* as a narrow holding, 109 S.Ct. at 2613, as did the Court of Appeals in this case. A comparison of the circumstances in each case shows

that the Court of Appeal's decision fits within the limited area delineated in *B.J.F.* – indeed, it is perhaps closer to the core values this Court sought to protect in *B.J.F.* Like *B.J.F.*, in the instant case petitioner's name was lawfully obtained from a police report available to the public. However, in *B.J.F.* the reporter knew she was not to take down the victim's name because, as a matter of Florida statutory law, a victim's name is not a matter of public record and may not be published. No such law existed in Texas when WCCO-TV legally obtained its copy of the police report.[1] In fact, the Harris County Sheriff's office was subject to an injunction requiring disclosure of the first page of all offense reports, including offense reports of petitioner's assault. See part II.C. *Supra.*

Further, in *B.J.F.* the full name of the victim was revealed and as a result she received harassing phone calls, was forced to move from her home, and was even threatened with rape. Here, only petitioner's first name and a photograph of her previous home were revealed. Consequently, petitioner has not been harassed as a result of the WCCO-TV documentary; in fact, she identified only five persons who may have become aware of her identity as a rape victim from the broadcast. Therefore, the facts in the instant case provide a stronger justification for the *B.J.F.* result than do the facts of *B.J.F.* itself.

The dangers of excessive media self-censorship underlying *B.J.F.* apply here with even stronger force. In *B.J.F.* this Court recognized the simple police report story

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[1] Petitioner relies in part upon article 57.01 of the Texas Code of Criminal Procedure as evidence that Texas safeguards the confidentiality of information relating to sex offense victims. As petitioner acknowledges, this provision was not enacted at the time of petitioner's assault or at the time of WCCO-TV's broadcast.

"involved a matter of paramount public import; the commission, and investigation, of a violent crime which had been reported to authorities." *Id.* at 109 S.Ct. 2611. Compare that story to WCCO-TV's documentary: an award winning program leading to the pardon of Steven Fossum for one rape and a motion for a new trial pending in another. WCCO-TV's report was the kind of report the First Amendment is intended to protect – an independent investigation of the facts of a crime and a conviction, a critical review of government performance, and a revelation of likely injustice. WCCO-TV used recognized journalistic techniques and made an interesting, truthful, and powerful presentation. It is exactly the speech *B.J.F.* protects from the chilling effect of self-censorship that would result from the imposition of liability for the publication and dissemination of important public information.

CONCLUSION

This Court should deny the petition for writ of certiorari because this case does not raise any federal constitutional issues or matters of nationwide importance subject to the Court's determination here. The Court of Appeals for the Fifth Circuit correctly determined and applied the law of Texas to this case's particular facts to find no invasion of privacy by public disclosure of private facts. This Court should not disturb those holdings. But should the Court find any constitutional issues, petitioner's claims are foreclosed by the recent decision in *The Florida Star v. B.J.F.*

Respectfully submitted,

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